

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF VIRGINIA

In re: EDWARD J. WILLIAMS, SR § Case No. 24-70207
 §
 Debtor § Chapter 13

CHRISTOPHER T. MICALE,
STANDING CHAPTER 13 TRUSTEE

Plaintiff

v.

Adv. Proc. No. _____

LENDMARK FINANCIAL SERVICES, LLC
Defendant

Serve: CT Corporation, Registered Agent
4701 Cox Road, Suite 285
Glen Allen, VA 23060

COMPLAINT

NOW COMES THE TRUSTEE, Christopher T. Micale, Standing Chapter 13 Trustee, by and through the undersigned counsel, and complaining of the Defendant(s) says and alleges as follows:

Jurisdiction

1. The United States Bankruptcy Court for the Western district of Virginia (the “Court”), has jurisdiction over this proceeding pursuant to 28 U.S.C. §§ 1334(b) and 157(a).

2. This proceeding is a “Core” proceeding as provided under 28 U.S.C. § 157(b)(2)(K).

Parties

3. Plaintiff Christopher T. Micale (hereinafter “Trustee”) is the Standing Chapter 13 Trustee administering the above-referenced Chapter 13 bankruptcy proceeding.

4. Defendant Lendmark Financial Services, LLC (hereinafter “Lendmark”) is a corporation existing under the laws of the Commonwealth of Virginia.

Facts

5. Edward Williams (the “Debtor”) filed a Chapter 13 petition (the “Petition”) with the Court on March 22, 2024.

6. At the time the Debtor filed the Petition, he was indebted to Lendmark. Included in the creditors listed on Schedule D is a debt in favor of Lendmark in the amount of \$25,300.00 secured by a 2011 Dodge Charger and a 2005 Ford F150.

7. The Debtor’s Plan proposes to surrender the 2005 Ford F150 but retain the 2011 Dodge Charger.

8. Specifically, the Plan provides that Lendmark will be provided the value of the claim - \$8,525.00 at 10% interest until paid in full.

9. On June 3, 2024, Lendmark filed Claim Number 13 which states the claim is secured as to the 2005 Ford F-150 but not the 2011 Dodge Charger.

10. Attached to Lendmark’s Claim No. 13 is documentation providing that the Debtor gave Lendmark a security interest in both the 2005 Ford F-150 and the 2011 Dodge Charger on October 14, 2022 by virtue of a security agreement.

10. Pursuant to Virginia Law, in order to properly perfect a lien on a motor vehicle, an application must be filed with the Department of Motor vehicles resulting in a notation of the existence of a lienholder on the certificate of title.

11. Upon information and belief, Lendmark failed to perfect their lien upon the 2011 Dodge Charger as required pursuant to Va. Code § 46.2-637.

Count One – 11 U.S.C. § 544

12. The allegations set forth in the foregoing paragraphs one (1) through eleven (11) are reincorporated as if set forth fully in this Count One in their entirety.

13. Pursuant to 11 U.S.C. § 544(b)(1), the Trustee shall have the power to avoid any transfer of property of the debtor or any obligation incurred by the debtor that is voidable by virtue of state law.

14. Virginia Code § 46.2-637 provides that security interests in motor vehicles are perfected upon the lien being notated on the certificate of title.

15. Accordingly, inasmuch as Lendmark failed to note the lien upon the title of the 2011 Dodge Charter for the security with the Virginia Department of Motor Vehicles, the claim is unsecured and the purported lien may be avoided.

WHEREFORE, THE CHAPTER 13 TRUSTEE RESPECTFULLY PRAYS THIS COURT TO:

- A. Issue a summons requiring the Defendant to answer or otherwise respond to the allegations set forth herein;
- B. Enter judgment declaring the Lien of Lendmark avoided pursuant to 11 U.S.C. § 544(b)(2);
- C. Allow the Trustee to recover any discretionary costs incurred in this cause; and
- D. Grant such other relief as this Court deems just and equitable.

OFFICE OF THE CHAPTER 13 TRUSTEE

CHRISTOPHER T. MICALÉ, TRUSTEE

By: /s/Rachel Jones
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